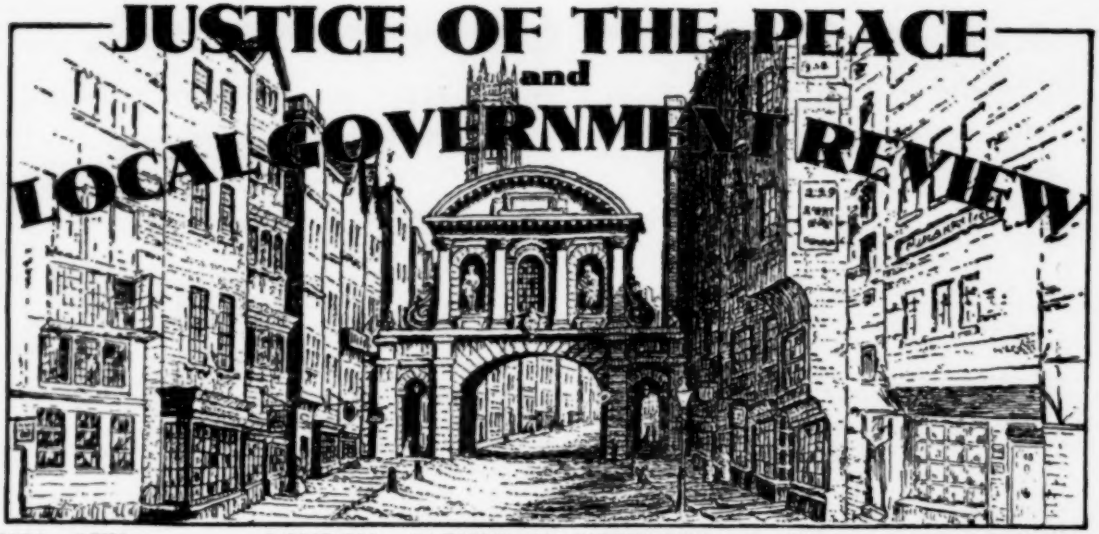

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NOTES of the WEEK

What is a Side-car?

Bristol magistrates recently dealt with a point of road traffic law which is of considerable importance to users of motor cycles and which may have repercussions in relation to questions of insurance.

The defendant was summoned for that he being the holder of a provisional licence under Part I of the Road Traffic Act, 1930, carried a passenger upon a motor cycle to which a side-car was not attached, such passenger not being a qualified driver.

The proviso to reg. 16 (3) (*a*) of the Motor Vehicles (Driving Licences) Regulations, 1950, provides that for the purpose of the subparagraph a motor bicycle shall not be deemed to be constructed or adapted to carry more than one person unless it has a side-car constructed for the carriage of a passenger attached.

Regulation 16 (3) (*b*) provides that the holder of a provisional licence shall not, in the case of a motor bicycle (other than a pedal bicycle of the tandem type to which additional means of propulsion by mechanical power are attached) to which a side-car is not attached, carry a passenger who is not himself the holder of a licence, not being a provisional licence, authorizing him to drive a motor bicycle, having been the holder of a licence for at least two years or passed a test under s. 6 of the Act of 1934.

The evidence showed that attached to the defendant's motor cycle was a box fitted on a side-car chassis, which was used to carry building materials. The prosecution contended that as the attachment was not built to take passengers it was not a side-car within the meaning of the regulation. The defence argued that it was a side-car properly attached, and that it was not necessary that it should be for the conveyance of passengers. The bench accepted the submission of the defence and dismissed the summons.

It may be that the case will be taken further as the point is obviously of importance and not beyond all doubt, in view of the use of the expression " a side-car constructed for the carriage of a passenger " in one part of the regulation and the use of the term " a side-car " in another part of the same regulation. However if those responsible for the drafting of such regulations feel that the decision, whether correct in law or not, defeats the intention of the present regulation, it would no doubt be possible for the regulations to be amended without much difficulty or delay.

Driving and Reading

It is sometimes possible to do two things at once. A common example is that of ladies who read while knitting, and appear to do both without effort and with enjoyment. However, it is true that most people cannot do two things at once, unless one of them is a sort of mechanical process done without concentration. A good rule is to attend to one thing at a time.

These reflections were prompted by the report of a prosecution for exceeding the speed limit, in which it was stated that the defendant, when stopped by the police, said he was reading the Highway Code at the time. Now a motorist is to be commended for reading the Code, as is his duty, but surely not for doing so while driving and, to make matters worse, driving fast. Either he is not taking in what he reads in such a way as to benefit by his reading or he is not concentrating sufficiently on his driving—or perhaps he is failing to make a good job of either. A motorist driving and reading might easily find himself charged with driving without due care and attention, and find it difficult to put forward a sound defence. A momentary glance at a map on the steering wheel, while driving at a moderate speed is perhaps permissible, but reading a book is quite another thing.

Allotments

A correspondent asks whether what he observed in the district in which he lives is common elsewhere. Allotments, he says, seem to have fallen largely into disuse, and where there were formerly dozens of well cultivated plots there are now a few here and there, surrounded by many others covered with weeds and completely derelict. Those people who are doing their best to grow crops are hampered by the weeds from the neglected land. Moreover, says our correspondent, such allotments as are being kept going are evidently being worked mostly by elderly men or by women, few young men being seen at work on them. The same neglect is to be observed in many gardens in which cottagers used to take a pride.

Whether this state of affairs prevails generally we do not know, but we hope not, and we know of some districts in which the position is quite different. Unfortunately there is some evidence that young men who work a five-day week devote too much of the sixth day to loafing about, and have no idea of the pleasure and profit of working an allotment. The cultivation of a garden or allotment provides healthy exercise in fresh air, and saves the cost of vegetables which can hardly be quite as fresh as those grown in this way. Besides, the extensive use of allotments can add materially to the food supply of the nation.

If Folly Grow Romantic

We had thought that that peculiarly English (or Anglo-American) menace, the sentimental faddist, had fully exposed himself in some of the attacks in Parliament and elsewhere upon popular sports, attacks so scathingly " debunked " (the vulgarism seems imperative) by the Scott Henderson Committee : Cmd. 8266 of 1951. But it has been left to the pseudo-educational faddists to demonstrate even more clearly their own danger

to the public, in the " protests " recorded in September at some length in the press, against a proposal of the town council of Barking to let a carnival committee publicly roast two reindeer in the park. Time was, when the roasting of an ox in the street and consumption of reeking slices by the bystanders was a major attraction of the annual fair in any self-respecting market town. At some, such as the Stratford Mop, the ceremonial roasting was important enough for the London newspapers to publish pictures of the beginning and the end, with the carcase reduced to a skeleton hanging over the dead charcoal of its pyre. Did the sentimentalists of those days howl dismally that Shakespeare's descendants were being debauched by such a spectacle? Or had sheer silliness less hold on Shakespeare's countrymen in an unrationed generation than it has today? Some of the critics seemed to think the reindeer were pets, being publicly butchered to make a Barking holiday: one writer offered £10 if he was allowed to give them a good home. Others wrote as if the creatures were to be roasted alive: in truth, they were very dead indeed, having been in cold storage for some months. (Perhaps the Ministry of Food were only too pleased to find this way of persuading somebody to eat them). The acme of absurdity came from the complainant who pointed out in the press that reindeer are traditionally associated with Santa Claus—incidentally, a modern innovation of dubious parentage, less English and less venerable than the tradition of feasting on roast flesh at the winter solstice. By parity of reasoning (if the compliment is justified) the housewife must never buy a rabbit for the children's dinner, since innumerable bunnies have enriched publishers of children's books, and certainly she must not set traps for Micky Mouse and Teddy Tail. And of course the urban district council of Ampthill must on no account catch and sell to butchers, as proposed, the rabbits and squirrels which have (says the same issue of a London paper which records the Barking protests) " invaded " the town and damaged gardens. In short, the twentieth century child had better be trained to eat nuts and grass and lichen. But what then are the rabbits, squirrels, and deer to eat?

Improvident Bargains

Protective provisions are regularly inserted in local legislation at the instance of rival public authorities or private persons: provisions which look harmless at the time, but may prove burdensome in future years. The promoters of a Bill are concerned above everything to secure its passing; if somebody apprehends damage, or has otherwise a *locus* for opposing, the line of least resistance is often to make terms with him, leaving future difficulties to be faced when they arise. This is natural; it is even inevitable, up to a point, since nobody can foresee the future. Nevertheless prudence suggests that protective clauses ought, when possible, to contain within themselves provision for their being reviewed in due course: where the protection agreed is for personal or proprietary rights, provision for review (or even cancellation) at the end of a generation seems appropriate. We are prompted to these remarks by a case reported in the London papers lately where, it seems, the city council of Hull have found themselves caught in a deluge turned on by their predecessors in 1882. The city's water undertaking has for many years extended outwards for some miles: in s. 84 of the Hull Extension and Improvement Act, 1882, the council accepted an obligation to supply water without charge from each of three taps at precisely named points upon a certain estate. The recitals in the Act of 1882 do not show the origin of this obligation; it would have been a natural *quid pro quo* if the waterworks committee at that time desired wayleaves for mains across the property, or were interfering with water sources belonging to the landowner. Even so, he might well have been satisfied with free water for (say) twenty-five or fifty years, the price thereafter to be settled by agreement or by arbitration. As the section stands, the obligation is perpetual and water may be drawn through the specified taps to an unlimited amount. The farmer on whose land one of the taps is situated now keeps eight hundred and fifty pigs, and takes free water at the rate of two million gallons a year. The city council calculated what they thought a reasonable quantity, based (we presume) upon what the needs of the farm would have been if it had been carried on in the manner contemplated when the Act was passed, and sought to charge the farmer for the rest. This involved, in effect, reading into s. 84 of their Act of 1882 a limitation that the amount of water drawn without charge must be reasonable, but, as the learned County Court Judge said, this would have been altering the statute. Parliament, with the collaboration of counsel, parliamentary agents, and the city's waterworks committee of 1882, had given a new and literal meaning to *après nous, le déluge*.

Sunday Trading

Sunday observance is a question upon which opinion is much divided, and probably always will be. Some people approach it from the point of view of religion, while others simply view it as a question of expediency with regard to rest and recreation. The tendency is undoubtedly to be less strict about such matters as church attendance, and to indulge more freely in amusements, than was the case two or three generations ago.

There are, however, still certain statutes which restrict certain activities on Sunday, and if some appear obsolete, others are by no means ineffective, as the following extract from *The Inspector* (official journal of the Institute of Shops Act Administration) shows:

" Sunday trading in articles not permitted to be sold on Sundays recently lead to a series of prosecutions at Morecambe Magistrates' Court.

" Mr. C. E. Bottomley, deputy town clerk, reminded the court that certain articles could not be sold on Sundays and continued, 'It will be appreciated that in a holiday resort Sunday opening is lucrative and some shopkeepers, even allowing for the risk of prosecution, find it profitable to continue Sunday trading. I cannot speak too strongly against this attitude. It is all wrong and causes deep resentment amongst shopkeepers who respect the Act. I would ask you to impose penalties which will show the public that unlawful trading on a Sunday does not pay.'

" One of the defendants, who entered a plea of 'Guilty,' stated that his shop was closed for nine months of the year. He felt that they should be allowed to open as shopkeepers as other resorts were permitted to do. He said that he thought the law was unfair, particularly when they had to pay rates for twelve months.

" Another defendant made similar remarks and added that at nearby holiday resorts the authorities were closing their eyes to the infringements as they realized what a struggle the shopkeeper was having. He concluded by saying that it was up to the shopkeepers to give the holiday-makers what they were looking for.

" The other defendants offered explanations in keeping with those already quoted.

" Three defendants were each fined £10, one was fined £5 and one other was fined £3. The Chairman of the Bench, Mr. Tom Atkinson, said they were there to administer the law as it stands and not to make it."

Without expressing any opinion on the merits of Sunday trading in holiday resorts, about which there is obviously a strong

feeling, we record our entire agreement of the attitude of the bench in proceeding to give effect to the law without regard to any views which they may entertain as to its desirability.

Fun and Games

Byelaws are a form of penal legislation, imposing restrictions enforceable by criminal sanctions; usually therefore they had better not be made, especially when the acts or omissions they are designed to punish are comparatively venial. Too often, the first thought of the local government official or committee chairman, when his council has acquired some property for public use, is—"what byelaws can we make?"—even when the property has previously been open to general use and enjoyment without restraints backed by the apparatus of summonses and fines. We suggest that a local authority asked by its officials or committee to make byelaws should always put them to strict proof of local need, upon the principle that, even in the century of the common man and in the welfare state, it may be conducive to the welfare of the common man to let him recreate in his own way in a recreation ground, and take the pleasures that please him in a public pleasure ground, notwithstanding that his recreations and pleasures are not those which appeal to the persons whom he has set over him—when exercising the freedom of the ballot box, as between the nominees of rival parties.

Grounds Let Off

But even so, there are some cases when and places where byelaws are found to be the only way of securing peaceful enjoyment by the public generally, of some piece of property belonging to the council. Questions of this sort arise from time to time about ground acquired or appropriated by a local authority for the purposes set out in s. 4 of the Physical Training and Recreation Act, 1937. That section can be worked in several ways, falling under the two main headings of management by the local authority and letting out to clubs or organizations. The Act says nothing about byelaws and, in general, ought to be workable without byelaws, even when the local authority itself manages the land acquired—*a fortiori*, when the land is wholly let off. But suppose it happens that outbreaks of hooliganism or other misconduct convince the local authority that byelaws must be made: is a power available? We think that s. 12 of the Open Spaces Act, 1906, provides the answer. The forerunner of that section was originally enacted partly because many local authorities in the nineteenth century had acquired grounds, substantially of the nature of ordinary pleasure grounds, under a statute which either gave no byelaw making power or gave a power to make byelaws without a power to impose penalties, so that the byelaws could only be enforced by indictment for a common law misdemeanour. The implication of s. 12 is certainly that the ground to be controlled by byelaws thereunder will be open to public use, in much the same way as an ordinary pleasure ground under s. 164 of the Public Health Act, 1875, but the Act is not so limited in terms. The expression "open space" is defined by s. 20 to mean "any land whether enclosed or not . . . laid out as a garden or used for purposes of recreation." This does not exclude the application of byelaws to ground available only to a limited class of users: the question whether such byelaws should apply to a ground which has been let out to sports clubs under the Physical Training and Recreation Act, 1937, is thus one of propriety rather than of pure law. Our own view however is that it would not be right to apply byelaws, except while the use of the ground was substantially that of an ordinary public pleasure ground. *Lumley's* notes upon the Act of 1906 are worth looking at, as showing sound practice, namely that a local authority ought not to impose upon the public restrictions which are outside the spirit of s. 15, or to deal, under that part of s. 12 which relates to open spaces, with grounds not substantially comparable with the grounds contemplated by s. 15 of the same Act, which are evidently those open in the same sort of way as under s. 164 of the Act of 1875.

Police and other Special Housing

Where Ministry of Health circular 36/50, dated April 3, 1950, differs, as the housing committee of the Association of Municipal Corporations seem to think, from views of the Oaksey Committee (report Part II, Cmd. 7831), is not clear. The alleged difference appears to relate to long-term provision of housing for police officers, which, by inference, is the main concern of a memorandum of the housing committee, adopted by the council of the Association, to point out what should normally form part of the function of a housing authority in erecting, maintaining and managing all houses required in an area for all sections of the community.

The memorandum argues against a statement in circular 36/50 that police houses built on or adjacent to the site of a housing authority, by inclusion in the authority's tenders at the request of the police authority, should be the responsibility of the police authority subject to suitable financial arrangements for an apportionment of the cost. Such procedure appears to be a corollary of the view expressed by the Oaksey Committee when they stated that they did not consider that housing authorities should permanently take over the duty, which properly falls on the police authority, of making provision for all police officers whom it is desirable in the public interest to house, which was recited in the Association's memorandum.

The "apparent" divergence of view drawn to the attention of the Association may arise from failure to appreciate the limited objective of the Oaksey Committee, in effect reiterated in the Ministry's circular, when stating it is essential that police and housing authorities should co-operate in ensuring that an adequate number of sites for police houses is provided at suitable places on all new building estates. Emphasis has to be laid on "sites," for operations by police authorities, which may, as also visualized in Oaksey report, Part II, para. 299, be by way of building included in a tender being let by the housing authority.

On merits, the five reasons advanced in the Association's memorandum for the provision of police housing by housing authorities are sound, though the lapse of fifteen months from the Ministry's circular, and two years from the Oaksey report, is a sad commentary on the gait of action. In particular, we are impressed by the memorandum's recollection of the Oaksey Committee's view that married policemen do not want to live in barracks or in colonies of police houses where they and their families are segregated from the rest of the community. In general the provision of housing for other public bodies, including government departments, is a direction in which absurd overlap of functions and duplication of expense can be, and sometimes has been, avoided. The principal difficulty is that a housing authority acting as agent for another body during a period of shortage appears to be giving undue assistance to a specially favoured class of tenants in preference to applicants on their own long waiting-list. Convincing explanation of circumstances is more tiresome and difficult nowadays when there is an increasing tendency to seek the satisfaction of personal needs from a motherly State ostensibly trying to equalize slices from a financial cake made from unequal contributions. If, however, effective service of the public interest requires the special provision of housing accommodation, whether in connexion with agriculture, airports, education, health, mining, police, or others, then it should be provided as far as possible by co-operative arrangements with executive authorities already operating.

DANGEROUS AND CARELESS DRIVING

A PLEA FOR THE AMALGAMATION OF SECTIONS 11 AND 12

By R. A. McKENZIE, *Clerk to the Justices, Hertford*

Wherever one meets magistrates, and lawyers practising before petty sessional courts, and clerks to justices, one is likely to hear the same old discussion as to the difference between dangerous and careless driving, or as to whether there is in fact any difference at all between the two offences other than the question of degree. The writer has clearly observed two quite distinct and opposing camps of thought on the subject. Whilst being himself a staunch supporter of the theory that there is a definite and technical difference between the two offences he has listened to many who adhere rigidly to the view that the difference is a question of degree only, and that cases of dangerous driving are attended by a more serious breach of the driving code than are cases of careless driving. But if the latter contention were the case, indeed, where would have been the need for Parliament to create separate offences by two different sections of the same statute? The very presence of the two different sections should leave no doubt in the mind that there is a technical difference between the two offences; this is surely only simple logic, but to define the difference appears to be a matter of extreme difficulty.

It is stated on p. 2 of the 1939 Supplement to *Mahaffy & Dodson's Road Traffic Acts and Orders* as follows: "As to the difference between 'reckless' and 'careless' driving, *see Reilly* v. *Philadelphia, &c.* (1938) 328 Pa. 563. To make an act reckless there must, said the court, be conscious appreciation of possible danger. We should add that though a driver does not appreciate it he may be found guilty if the court think that a reasonable driver should have done so. The C.C.A. have held that a defendant cannot be convicted of dangerous driving if the judge of fact thinks that he only erred in judgment (*R.* v. *Howell* (1939) 103 J.P. 9). Dealing with *R.* v. *Howell* later on the same page the learned editor states: "The court, it seems, thought that the test of dangerous driving is not objective; but that some mental impropriety must be shown to establish it. To us it appears arguable that a man may be guilty of dangerous driving, whatever be his mental state, if danger, actual or potential, to the public follows from his driving." Admittedly this last proposition of the learned editor is acceptable enough on a simple reading of the words of s. 11 only, *viz.*: "If any person drives a motor vehicle on a road . . . in a manner which is dangerous to the public . . ." The weak link in the chain of this argument, however, is the fact that it appears to be extremely difficult, if not impossible, to visualize a case of careless driving under s. 12 where some element of danger to the public, potential if not actual, does not exist. Mere errors of judgment should not, of course, be considered for this purpose, as they do not constitute offences.

The writer much prefers to accept the proposition that to constitute dangerous driving there must be "conscious appreciation of possible danger."

The question has been rendered all the more important since there has, of late, been considerable public outcry for convictions for the more serious cases of dangerous driving to be accompanied by sentences of imprisonment.

The writer, believing as he does in the strictly technical difference between offences under the two sections, has adopted the policy of advising his justices to consider first of all in each case whether the defendant's driving was so culpable that the defendant ought to be punished under the Road Traffic Act, 1930. If they decide that he should be punished then it should be only a matter of a few minutes' consideration to determine whether on the evidence the defendant wilfully "took a chance" or whether he unintentionally drove badly by neglecting to pay proper attention to his driving and to the road. Let us take a hypothetical case as an example. A, driving along a de-restricted road, approaches a cross roads heralded by a sign reading "Halt at Major Road ahead." He does not slow down, but proceeds across the major road at a steady thirty miles per hour. In the middle of the cross roads he collides with another car travelling along the major road, and is summoned for offences under ss. 11 and 12 of the Road Traffic Act, 1930. Giving evidence in his defence the defendant states that he was not familiar with the road in question and failed to observe the "Halt at Major Road ahead" sign because shortly before reaching the spot where the sign was situated he bent down to pick up a lighted cigarette which he had dropped on the floor, and his crossing of the major road without halting was therefore not done deliberately. He admits, however, in cross-examination that he should have brought his car to a standstill before attempting to pick up the cigarette, and agrees that his failure to do so amounts to at least careless driving. In the writer's opinion if the magistrates are correctly advised they should be told that if they believe the defendant's evidence *in toto* then they should find him guilty of careless driving; if, on the other hand, they reject his evidence that he did not see the sign then they should find him guilty of dangerous driving, and this test should be applied quite irrespectively of the amount of damage done or the number of persons killed or injured in the accident.

Whatever view is taken of the difference between the two offences it is obvious that the worst possible cases of dangerous driving are far more serious offences than are the worst possible cases of careless driving; provision has been made accordingly by Parliament since the maximum penalty for a first conviction under s. 11 is a fine of £50 or imprisonment for a term not exceeding four months, whereas the maximum penalty for a first conviction under s. 12 is a fine of £20. It is submitted that, if one acknowledges the technical difference between the two offences, justices should be advised by their clerks that it is possible for some cases of careless driving to merit more severe punishment than do the least serious cases of dangerous driving.

The writer has sought to make it clear that his own view is that there must be a technical difference between the offences visualized by ss. 11 and 12, whilst at the same time admitting that a considerable amount of opinion in the legal profession is against him. To those in the opposite camp of thought he would like to reiterate two of his statements. Firstly, he does not consider it an easy, if possible, task for his opponents to outline the circumstances in which a case could be found by the justices to be one of careless driving and in which some element of danger to the public, either actual or potential, would not exist. Secondly, if the opinion of the opponents of the writer is correct, then there is undoubtedly all the more justification for the plea for an early amalgamation of ss. 11 and 12.

CORRECTIVE TRAINING

[CONTRIBUTED]

There has of course been insufficient time to assess the value of corrective training since it was introduced by the Criminal Justice Act, 1948, on April 18, 1949; but the two years which have since elapsed afford some opportunity of assessing the appropriateness of the conditions precedent to such a sentence, the most important of which for this purpose are:

(*a*) The offender must be at least twenty-one years of age; and

(*b*) He must have been previously convicted on two occasions of an indictable offence since attaining the age of seventeen.

The following statistics summarize the position during the two years from April 18, 1949, to April 18, 1951, in regard to cases dealt with before what may perhaps be regarded as an average county quarter sessions:

Offenders	Age range					Total
	Under 21	21 but under 25	25 but under 30	30 but under 35	35 and over	
(1) Sentenced to corrective training ..	—	5	2	1	1	9
(2) Technically qualified for corrective training by reason of age and previous convictions but not sentenced thereto and reported by Prison Commissioners as being:						
(*a*) Suitable and medically fit ..	—	2	4	3	6	15
(*b*) Unsuitable but medically fit ..	—	21	7	11	15	54
(*c*) Suitable but medically unfit ..	—	—	—	1	—	1
(*d*) Unsuitable and medically unfit ..	—	—	3	2	4	9
Total ..	—	23	14	17	25	79
(3) Under 35 and not technically qualified for corrective training but sentenced to 18 months' imprisonment or more ..	3	7	1	2	—	13

Note: The foregoing statistics include offenders committed to the appeal committee for sentence under s. 29 of the Criminal Justice Act, 1948.

Of the eighty-eight offenders technically qualified for corrective training only nine (*i.e.*, ten *per cent.*) were actually so sentenced; and this compares somewhat unfavourably with the position as regards borstal training where the prescribed qualifications seem more closely adapted to the circumstances arising. Out of seventy-six offenders technically qualified during the same period for borstal training, thirty (*i.e.*, thirty-nine *per cent.*) were sentenced thereto.

As regards the offenders not in fact sentenced to corrective training, fifteen (*i.e.*, seventeen *per cent.*) had been reported by the prison commissioners as both suitable and medically fit therefor; but from the sentences actually passed, which in no case exceeded eighteen months' imprisonment, it would appear the court took the view that the prisoners' offences and antecedents were not in fact such as to justify sentences of corrective training. No less than fifty-four (*i.e.*, sixty-one *per cent.*) of the offenders though medically fit for corrective training, were reported by the prison commissioners as unsuitable therefor, principally by reason of their previous records, and it is somewhat surprising that no less than twenty-one of these offenders were under twenty-five years of age. Fourteen of these twenty-one offenders were sentenced to eighteen months' imprisonment or more, as compared with only five in the same age-group who were sentenced to corrective training.

Perhaps the most surprising aspect however is that during the same period there were ten offenders under twenty-five years of age who were not technically qualified for corrective training but who were also sentenced to eighteen months' imprisonment or more; it seems reasonable to infer that a material proportion of these offenders might appropriately have been sentenced to corrective training had they been technically qualified. Three of the offenders were disqualified because they were not twenty-one years of age; the remainder, though previously sentenced to borstal or imprisonment or in some cases both, had not the prescribed convictions since attaining seventeen. On at least four occasions (*Barrett* (1949) 34 Cr. App. R.3; *Apicella* (1949) 34 Cr. App. R. 29; *Murray* (1950) 34 Cr. App. R. 203; *Grant* (1950) 34 Cr. App. R. 230) the Court of Criminal Appeal has referred to corrective training as a sort of extended borstal training and it seems disturbing to find that as compared with twenty-eight offenders under twenty-five years of age who were technically qualified for corrective training there were also ten offenders not so qualified but who might possibly have otherwise been sentenced thereto rather than to imprisonment.

The qualifications for corrective training give rise to some fine distinctions in practice. Previous convictions in England, Wales and Scotland count for this purpose, but not previous convictions in Northern Ireland or elsewhere (*Murphy* (1949) 34 Cr. App. R. 18); nor convictions by courts martial (Criminal Justice Act, 1948, Section 80 (1)). Where an offender has been placed on probation or bound over on indictment (but not summarily) under the Probation of Offenders Act, 1907, this ranks as a previous conviction; but not where he is dealt with by probation order or conditional discharge under the Criminal Justice Act, 1948, unless he is subsequently sentenced for the original offence after attaining seventeen (s. 12 (1)). A borstal sentence passed a few days before the offender attained seventeen does not count; nor does conviction on indictment of a serious offence with a large number of other offences taken into consideration in itself afford sufficient qualification. If an offender has the requisite convictions it is likely he will have others as well and it seems possible that in practice he will then be reported as unsuitable for corrective training by reason of his bad record.

In *R.* v. *Griffin* (November 27, 1950) the Court of Criminal Appeal suggested consideration should be given to the extension of corrective training to delinquents under twenty-one who have served a borstal sentence which has failed in its object; and, if the foregoing statistics can be regarded as typical of the position generally, consideration might also usefully be given to widening other conditions precedent to a sentence of corrective training and leaving the propriety of such a sentence more to the discretion of the court, just as the limitations on borstal sentences originally

defined by the Prevention of Crime Act, 1908, were widened forty years later by the Criminal Justice Act, 1948, when borstal treatment had proved itself. If corrective training also proves of value, possibly the strait-jacket limiting the discretion of the court will be removed by another Criminal Justice Act, in 1988.

WHAT'S IN A NAME?

By W. E. LISLE BENTHAM

" That which we call a rose, by any other name would smell as sweet," wrote Shakespeare and it is perhaps characteristic of the sound sense and elasticity of our English law that, except in the case of aliens, it should make no attempt in general to limit a man's right to change his name by the assumption of any name he pleases, either in substitution for, or in addition to, his original name. The law concerns itself only with the question whether he has in fact assumed or come to be known by a different name and hence the importance of the change being evidenced by deed poll, duly executed and attested, and enrolled in the Central Office of the Supreme Court (R.S.C. Ord. 61, r. 9) or, in the case of persons of rank seeking also an assumption of arms, by Royal Licence enrolled in the College of Arms.

The first or Christian name given to a person on baptism, however, appears originally to have been regarded by the law to some extent as sacrosanct. Whilst it was recognized that it could be changed by the inherent power of the bishop at confirmation, it was implied that otherwise no change was possible (*Walden* v. *Holman* (1704) 6 Mod. Rep. 115, *per* Holt, J., at p. 116; *Jones* v. *Macquillin* (1793) 5 Term. Rep. 195). In the *dictum* of Lord Coke: " A man may have divers names at divers times, but not divers Christian names " (Co. Litt. 3a). This was the rule of the ecclesiastical law which was followed in *Re Parrott* [1946] 1 All E.R. 321, where it was held that a Christian name may be legally changed in three ways only, namely: (1) by Act of Parliament, *e.g.*, the Baines Name Act, 1907; (2) on confirmation by a bishop; and (3) by addition on adoption, which was considered somewhat of an anomaly, but as to which *see* now s. 12 (2) (*b*) of the Adoption of Children Act, 1949. The case is interesting as showing the concern of the law with the question of identity and also the trouble that can be caused by a carelessly drawn will. A testator gave his residuary estate to the plaintiff on condition that he should " by deed poll assume " a certain name, which would have involved taking the name of Walter Tim Spencer Parrott in substitution for his present name of Tim Harrington Spencer Cox in a two-fold manner, *i.e.*, firstly by abandoning his compound baptismal name of Tim Harrington Spencer in favour of the new compound name of Walter Tim Spencer and secondly by altering his surname Cox to that of Parrott. Vaisey, J., held that the condition of the gift was impossible of fulfilment because a Christian name cannot be changed by deed poll and that the condition also failed for uncertainty because there was no indication as to what the testator meant by the word " assume." In the result the court declared that the plaintiff was entitled to the residue free from the condition, the costs of the proceedings falling upon the estate.

As was pointed out in an article founded on this case in 111 J.P.N. 161, however, the old ecclesiastical rule cannot be applied for many of the purposes of ordinary life, for a Jew, an infidel, or a pagan cannot have any baptismal Christian name, and in *R.* v. *Billinghurst* (1814) 3 M. & S. 250, it had already been held that a marriage was valid notwithstanding that the banns had been published in a Christian name other than that by which the husband was baptized. It may be that the basis of the decision in *Re Parrott* (if that case is eventually accepted as sound law) will be held to be the testator's insistence on a deed poll, to be executed by a person who in fact possessed a " Christian " name, rather than the learned Judge's insistence upon the old ecclesiastical law. If so, that case is not to be regarded as authority for the proposition that a person may not acquire a new Christian name for all legal purposes—except possibly the purpose of compliance with specific conditions of bequests under wills.

A woman on marriage normally assumes the surname of her husband and thus acquires a new name by repute, although in Scotland her maiden name frequently continues to be used, *e.g.*, in announcing her death. If for any reason a married woman living apart from her husband wishes to alter her name *by deed poll*, however, under the Enrolment of Deeds (Change of Name) Regulations, S.I. 1949 No. 316/L.3, it is necessary for her to obtain her husband's consent, unless she can show good cause to the contrary (*see* article in 114 J.P.N. 366). Upon dissolution of the marriage, she can either retain her married name, or resume her maiden name, or acquire another name by reputation (*Fendall* v. *Goldsmid* [1877] 2 P.D. 263). On her second marriage there is nothing in point of law to prevent her from retaining her first husband's name and also any courtesy title she may have acquired by marrying him (*Cowley* (*Earl*) v. *Cowley* (*Countess*) [1901] A.C. 450). A solicitor is in a peculiar position in that he is not qualified to act as such unless his name appears on the roll and accordingly it is now necessary to have a change of name formally recognized by application to the Master of the Rolls or, in the case of a woman on marriage, to the Law Society (S.R. & O. 1943 No. 1607, reg. 18).

By adopting the name or compound names by which another person is already known, a person does not commit any legal wrong against that person (*Du Boulay* v. *Du Boulay* (1869) L.R. 2 P.C. 430; *Cowley* v. *Cowley*, *supra*), but the use of another person's name may be the electoral offence of personation (Representation of the People Act, 1949, s. 47) or an ingredient in a crime. Thus, where a man obtained goods by falsely stating that his name was H. Beach and that he owned and carried on at Coventry a good class business as a baker, it was held that the fact that his real name was Thomas James Whitmore and that he was an undischarged bankrupt was one upon which the jury were entitled to find on the evidence that his pretence was made with intent to defraud and induced the prosecutor to part with the goods (*R.* v. *Whitmore* (1914) 10 Cr. App. Rep. 204). Again, the use of a person's name for a supposedly fictitious character in a publication may involve both the author and publisher in libel proceedings (*Hulton* v. *Jones* (1910) A.C. 20; 101 L.T. 831).

In the world of commerce, subject to certain well defined rules, the name of an individual, firm or company represented in a special or particular manner, or the signature of the applicant or of some predecessor in his business, may be registered as a trade mark (Trade Marks Act, 1938, s. 9 (1) (*a*) and (*b*)). Subject to certain exceptions, valid registration confers on the registered proprietor the exclusive right to the use of such trade mark upon or in connexion with the goods in respect of which it is registered (*ibid*, ss. 4, 5) and any invasion of this right is an infringement of the trade mark actionable at law. Apart from registration as a trade mark, however, the only right which the

law recognizes in a trade name is the right of the person using such name to prevent others from using it so as to deceive the public by passing off their goods or business as being his, but the courts have always been most reluctant to interfere with the right to trade under one's own name, even though it be the same as that of a better known competitor, except in cases where the name of such competitor has obtained such universal reputation in connexion with a particular class of goods that confusion must arise unless special precautions are taken to prevent it as, *e.g.*, by insisting upon the defendant using his full Christian name or refraining from adding such words as " & Co." to his name.

A trader is not entitled to exclusive proprietary rights in what may be described as a " fancy " name *in vacuo*. His right to protection in an action for passing off must depend on his showing that he enjoys a reputation in that name in respect of some profession or business he carries on or some goods which he sells. Further, it is essential for him to establish that the acts of the defendant have been or are calculated to lead the public to confuse his business or goods with those of the defendant. This element of confusion necessitates comparison between the two professions or businesses and it must therefore also be shown that both parties are engaged in a common field of activity. Thus, it was held by Wynn-Parry, J., that a well-known broadcaster in the B.B.C. " Children's Hour " programme using the professional name of " Uncle Mac " was not entitled to restrain a commercial concern from advertising its wares as " Uncle Mac's Puffed Wheat " with the slogan " Uncle Mac loves children—and children love Uncle Mac." (*McCulloch* v. *Lewis A. May* (*Produce Distributors*) *Ltd.* [1947] 2 All E.R. 845). Similarly, the same judge refused to grant an injunction to restrain defendants from using the name " Sherlock Holmes " and the address 221b Baker Street without making it clear that their business and magazine had no connexion with the late Sir Arthur Conan Doyle, or his literary works, or his executor, the plaintiff (*Conan Doyle* v. *London Mystery Magazine* (1949) 66 R.P.C. 312). On the other hand, the same judge granted a woman journalist a declaration that she was entitled to use the pseudonym of " Mary Delane " in connexion with any article or book written by her and an injunction restraining a newspaper from passing off any article or literary work not written by her as her work by the use of such *nom de plume* (*Forbes* v. *Kemsley Newspapers Ltd., The Times*, June 30, 1951). In that case the plaintiff had previously written articles for the defendants' newspaper under such pen name, but the judge held that there was no evidence that the use of that name had been either expressly or impliedly reserved to them under the terms of her contract of employment with them such as would otherwise have brought the case within the authority of *Landau* v. *Greenberg* (1908) 24 T.L.R. 441 and *Hines* v. *Winnick* [1947] 2 All E.R. 517).

The Companies Act, 1948, would appear to give the Board of Trade unfettered discretion to refuse to register a company by a name which it considers undesirable (s. 17) and to sanction a change of name by a company which is in its opinion too like the name of a previously registered company (s. 18 (2)). Under the Business Names Act, 1916, as extended and amended by the Companies Act, 1947 ss. 58, 116 and sch, 9, Part 2, all individuals and firms carrying on business in the United Kingdom under a name which does not consist of their real names or, in the case of a company, its corporate name must register prescribed particulars with the Registrar of Companies, failing which they are not only liable to penalties, but also liable to find their contracts unenforceable.

From what has been said above, it would seem that in its legal aspect there is a great deal more in a name than even Shakespeare supposed.

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Evan John Lloyd, 154, Manselton Road, Swansea.
His Honour Judge Samuel, K.C., 24, Corrymore Mansions, Sketty Road, Swansea.
John Aeron-Thomas, Dolgoy, West Cross, Swansea.
John Oliver Watkins, Hillside, Ffynone, Swansea.
Mrs. Margaret Louisa Williams, Oakleigh House School, Uplands Terrace, Swansea.

MISCELLANEOUS INFORMATION

THE ROAD AND RAIL TRAFFIC ACT (EXEMPTION) REGULATIONS, 1951

The regulations granting exemption in certain cases from the requirement of the Road and Rail Traffic Act, 1933, that a goods vehicle shall not be used for the carriage of goods for hire or reward, or in connexion with a trade or business, except under a carrier's licence have now been consolidated under the title of the Road and Rail Traffic (Exemption) Regulations, 1951.

At the same time the Minister of Transport has extended the list of exemptions to cover other uses of vehicles which are technically goods vehicles and would otherwise require carrier's licences.

For example, after September 19, 1951, when the regulations came into force, doctors, nurses, midwives, dentists, and veterinary surgeons will be able to use, without a carrier's licence, vehicles carrying medicine, instruments, or apparatus.

Exemptions are also granted for the use of pedestrian controlled vehicles, motor cycles (including motor cycles with side-cars attached) for the carriage of tools, apparatus, or materials required by the driver in carrying on his trade or business; passenger vehicles with seats for not more than seven passengers, excluding the driver, when adapted to draw or drawing a trailer if neither the trailer nor any goods carried in it are carried for hire or reward; and of locomotive ploughing engines, tractors, agricultural tractors, and other agricultural engines when used for certain agricultural and similar purposes.

Copies of the regulations, entitled "The Road and Rail Traffic Act (Exemption) Regulations, 1951," can be obtained from H.M. Stationery Office.

WESTMINSTER CATHEDRAL

A Votive Mass of the Holy Ghost (the Red Mass) will be celebrated on Monday, October 1, 1951 (the opening of the Michaelmas Law Term) at 11.45 *a.m.* in the presence of His Grace Archbishop Myers. Counsel will robe in the Chapter Room at the Cathedral. The seats behind counsel will be reserved for solicitors. Those desirous of attending should inform the Hon. Secretary, Society of Our Lady of Good Counsel, 6, Maiden Lane, W.C.2., in order that an adequate number of seats may be reserved.

NATIONAL ASSOCIATION OF LOCAL GOVERNMENT OFFICERS

A week-end school for Administrative and Clerical Officers in Hospitals and other branches of the National Health Service will be held at York House Hotel, Eastbourne on October 12-14. Further details may be obtained from Mr. A. E. Kay, Honorary Secretary, NALGO Area Education Committee, County Hall, Chelmsford.

REVIEWS

Halsbury's Statutes of England, Vol. 25, 26 and 28. London: Butterworth & Co. (Publishers) Ltd. Price 65s. per volume.

One of the principal tasks of those whose concern it is—whether as justices or local government administrators—to know the law is to discover the statutory provisions which bear on the problems before them. During the past half century and more the body of statute law has grown to such vast dimensions as to demand, in the interests of completeness, a work of corresponding magnitude. Only so can the reader have reason to think that no provision, perhaps of pivotal importance, has eluded him. With the issue of the present volumes of *Halsbury's Statutes* the main work is complete, save for the index volume, which is in preparation. The first two (Vols. 25 and 26) carry the work from "Theatres" down to the last heading, "Wills"; the third (Vol. 28) is a special continuation volume for 1948-9, necessitated by the fact that publication of the work began in the autumn of 1948 and (as the earlier reviews in the *Justice of the Peace and Local Government Review* bear witness) has continued at intervals ever since. The present volume stands, therefore, on a different footing from forthcoming continuation volumes, which will be concerned with Acts passed since the completion of the main series. A common basic plan is, however, envisaged for all the continuation volumes, with a complete list of titles taken from the main work, and both chronological and alphabetical indexes. Thus the addition of further volumes necessitated by the passage of time will not rob the work of its essential coherence and unity. Moreover the whole is, and will be, linked together by annual cumulative supplements enabling the reader to trace without difficulty the latest developments of statute law. Of the quality of the work we have spoken in previous notices and it will be sufficient to record on the present occasion that its early promise has not been belied. The grouping of the statutes, or parts thereof, under the various headings is admirably conceived and the annotations are both competent and helpful. These volumes provide the most valuable survey of statute law extant, and it would not be possible to regard any law library, whether personal or for general use, as complete without them.

A Magistrate's Handbook. Second edition. By Sir Ronald Bosanquet, K.C., and A. J. F. Wrottesley. Thames Bank Publishing Co., Ltd., Hadleigh, Essex. Price 12s. 6d.

The first edition of this work, published in 1929, has become out of date owing to a considerable number of new Acts of Parliament, of which the most important is perhaps the Criminal Justice Act, 1948. This new edition has the advantage of a cordial recommendation from Lord Roche in a brief foreword. It certainly covers the field of a magistrate's duties comprehensively and explains the nature of his office and duties in petty sessions, at quarter sessions, licensing and other spheres of activity. From it the lay justice can learn much without being called upon to read a long or technical work, for this is concise and written in plain language.

As the book is not a text-book, but rather a handbook or guide, some statements in it are naturally made in more general terms than would be suitable for a work of reference, and it would be hardly fair to seize upon a number of small points for criticism. We feel bound to comment, however, upon the statement that "The method now of dealing with first offenders who have committed serious offences, but in whose cases leniency appears to be desirable, is to make a probation order." While it is true that probation is used most commonly in the case of first offenders, and that this is no doubt right, we think it a pity if justices should get the impression that this method of treatment is not available for those who have offended before. We cannot help thinking also that the provisions of ss. 6 and 8 of the Criminal Justice Act, 1948, which distinguish clearly between a breach of requirements of a probation order and the commission of a further offence during a period of probation, are not very helpfully dealt with, and that a lay justice might easily become confused as to his powers and the procedure to be followed.

South Bank and Vauxhall. Edited jointly by Sir Howard Roberts and Walter H. Godfrey. London: London County Council. Price 30s.

This, the twenty-third volume of *The Survey of London*, is a most interesting historical work appropriately concerning (in Festival year) South Bank and Vauxhall. The old village of Lambeth lay to the south of the church and palace by the waterside; its population mainly being watermen, boat builders and potters. With the formation of the Albert Embankment, the old houses and streets were swept away, but the church still retains its fifteenth century tower and in Lambeth Palace the area can boast an historical monument of national importance. The book gives a detailed history of the river front including the site of the South Bank Exhibition and the various industries which were formerly located there. The volume contains many items of interest, such as that Silas and John Galsworthy, forbears of the novelist and prototypes of the older Forsytes, built some of the houses in Stamford Street and lived there when they first came to London from Dorset; that St. John's, Waterloo Road (the Festival Church) stands on the site of a pond which was formerly the haunt of wild duck. With 127 plates, in addition to other numerous illustrations, and with a frontispiece in colour—this is a most interesting work, deserving of a wide circulation.

Digest of the Law of Murder and Culpable Homicide. By Trafford B. Barlow. Cape Town: Juta & Co. Ltd. Price 7s. 6d.

Dr. Barlow is an advocate of the supreme court of South Africa, and professional assistant to the Attorney-General, Cape Town, and his experience well qualifies him to undertake the compilation of such a digest.

South African law is to some extent based on Roman-Dutch, but English cases are cited as well as South African and there is great

similarity between the criminal laws of each country. The reader will, however, find in this small book material for a study in comparative law.

Dr. Barlow has deliberately refrained from dealing with the question of culpable homicide by motor-car drivers, as any attempt to discuss the principles of law applying to motorists would have meant increasing the size of the book to undue proportions. The English case of *Andrews v. Director of Public Prosecutions* [1937] A.C. 576, illustrates the difficulty of dealing briefly with so difficult a subject, and Dr. Barlow is no doubt wise in limiting the scope of this well planned digest.

The Youngest County. Published by the London County Council. Price 5s. net, by post 5s. 7d.

The London County Council has for many years issued volumes of statistical and other information about its work, and about conditions in the administrative county. The book now before us, published in July, 1951, is said to be its first attempt to portray the whole of its work and services in such a manner as to have a wide popular appeal. The general editor is Mr. W. E. Jackson, an assistant clerk of the County Council, and several others of the Council's staff have collaborated in its production. Since its authorship is internal, and it is obtainable at the County Hall, as well as directly or through any bookseller from Messrs. Staples Press, Ltd., Mandeville Place, W.1, it should perhaps be classed as falling into the field of public relations. There are 188 pages of text, more than 200 photographs, and fifty-two colour sketches and maps, claiming to "Tell the story in a human way . . . from the point of view of the Londoner and his wife and children." The result is much like the larger guide book of the South Bank Exhibition, or the brochures issued by bodies interested in promoting travel. Many of the photographs are pleasing, some interesting, a few commonplace or badly chosen, but most are at any rate informative. The topics covered are enumerated in a press notice saying that "Under such titles as Fire, Flood, Going to School, Healthy and Wise, Down the Drain, Homes for Children, the Open Air, Housing, Watchdogs of the Public, and the Inner Man, the chapters describe the Council's services and how they are run, and show them as an integral part of the everyday life of London." For serious students, the absence of an index would be a drawback, but the book is hardly meant for them. We are indeed not sure for what type of reader it is intended : it is written in an easy journalistic style, with occasional lapses into affectation, but to the average newspaper reader it should be interesting, and genuinely informative, without causing him to feel that he is being crammed with instruction. It ought to be put in the way of all London children in the senior schools, and most of their parents could read it through more than once, to their own advantage. The press notice mentioned above suggests that it should be of interest abroad and to visitors from overseas : this is a sound suggestion—even foreigners, with a little English, could gain information from it. The cost of production must have been heavy, and London ratepayers have cause, therefore, to wish it a profitable market and prosperous career. It certainly deserves success.

The Juvenile Court Today and Tomorrow. By John Watson. London : The Clarke Hall Fellowship. Price 1s. 6d.

This is the Clarke Hall Lecture to which we referred in a Note of the Week in our issue of May 19, now available in pamphlet form. Mr. John Watson is well known as a chairman of metropolitan juvenile courts and as a writer on juvenile delinquency and its treatment. Those who have read his earlier works will be glad to read this lecture, which contains proposals that are certainly provocative of discussion put forward persuasively.

The booklet also includes a short appreciation of the work of the late Sir William Clarke Hall, the pioneer in juvenile court development in London.

The English and Welsh Boroughs. By W. Barnard Faraday. London : The Thames Bank Publishing Company Limited. 1951. Price 10s. 6d. net.

Mr. Faraday is recorder of Barnstaple and Bideford, and so has a personal and professional interest in the ancient borough, as an institution. He has set out here to provide, in small compass, an historical outline from before the Norman Conquest to the present day. Mr. Faraday evidently has his prejudices which crop up here and there (as who has not), but he has collected in chapter after chapter a quantity of information not readily available elsewhere. Much of it is in tabular form, and pretty well anything one wants to know about boroughs as an institution seems to be given. The book will appeal to most of our own readers, and especially to those with a turn of mind for history.

LAW AND PENALTIES IN MAGISTERIAL AND OTHER COURTS

No. 63.

A CONDITION OF SALE THAT WAS NOT ILLEGAL

A limited company carrying on business as costumiers appeared before Mr. A. P. Peaker, the Middlesbrough Stipendiary Magistrate, earlier this year at the instance of the Board of Trade, to answer (*inter alia*) two charges laid under s. 9 of the Goods and Services (Price Control) Act, 1941. The two charges alleged that the company, by refusing to allow a woman customer to buy a utility gaberdine coat without the non-utility hood to be worn with it, had imposed an illegal condition of sale.

In opening the case for the prosecution upon the two charges, Mr. John Trapnell, representing the Board of Trade, described the prosecution as a friendly one because it was admitted that the defendant company thought they were legally entitled to act as they had, and the prosecution had been brought to decide whether the company was right. It was indicated to the learned stipendiary magistrate that, whatever his decision, it was probable that he would be asked to state a Case for the opinion of the High Court.

For the prosecution, evidence was given that in September, 1950, a woman saw displayed in the defendant company's branch shop in Middlesbrough, a gaberdine coat complete with hood, and marked at a composite price of £9 7*s.* 8*d.* The woman went inside the shop, where she was shown a number of similar coats with hoods attached. She chose a blue coat, but did not like the tartan-lined hood, and asked if she could have the coat without the hood.

The assistant said that the hood was detachable and the woman customer thereupon agreed to buy the coat with the hood, and agreed to pay 15*s.* for alterations. As she had not sufficient money with her to pay the whole amount due, she paid a part of it and was given an invoice.

On reaching home she examined the account and saw that the coat and the hood had been charged separately, the coat being priced at £6 3*s.* 10*d.* and the hood at £3 3*s.* 10*d.* She immediately telephoned the shop and told the manageress that it looked as if she were buying two articles, and that she did not want the hood. The manageress agreed that it looked as though she were buying two articles, but said that unless the customer had the hood she could not have the coat. The customer then paid the balance.

Subsequent approaches made by the woman's husband to the firm's Leeds office resulted in a continued refusal on the part of the firm to allow the customer to have the coat without the hood. The coat and hood were returned to the shop and eventually the amount paid was refunded. The second of the two charges related to one of the customer's subsequent calls at the shop when she was again told she could not have the coat without the hood.

Mr. Ernest Wurzal, solicitor, Leeds, appearing for the defendant company, contended that the gaberdine coat and hood constituted one unit and were not made to be sold separately, and, therefore, no question of a condition of sale arose. Secondly, if the argument failed, he relied on the proviso contained in s. 9 (2) (*a*) of the Goods and Services (Price Control) Act, 1941, that "To sell the coat and hood separately would be contrary to the normal practice of his business."

The learned stipendiary magistrate reserved his decision, and at the adjourned hearing, dismissed the two charges and awarded the defendant company £8 8*s.* costs.

In the course of his judgment, the learned stipendiary magistrate pointed out that "The coat bought by the lady customer and, indeed, all the coats, were specially made to be worn with a hood. The collar was shaped for that purpose and would not have been that shape if it had not been intended to be worn with a hood attached. To my masculine mind, it would appear that no woman would have bought a coat of this type without a hood. Certainly there would have been no sale for a hood without a coat, and if retailers sold coats without hoods they would inevitably have left on their hands a number of hoods.

"The point for decision," he added, "is whether, in insisting that coat and hood must be sold together, the defendant company were selling a price controlled article, namely, the coat, subject to a condition requiring the buying of other goods, namely, the hood. I do not think they were selling subject to any such condition. I do not think that s. 9 of the Goods and Services (Price Control) Act was meant to cover the state of affairs outlined in this case. In my view, the section was intended, for example, to prevent a tradesman who

had a lady's green coat to sell, insisting that the purchaser should also buy a green handbag which might or might not go with it. That is not the case here, which is more akin to the case of a men's outfitter who has a ready made suit displayed in the window. A purchaser, who normally never wore a waistcoat, might like the look of the suit, but it seems fantastic to suggest that he could claim to buy the coat and trousers only at a reduced price and that the outfitter who said he must buy the waistcoat was imposing a condition of sale. I find, therefore, that the coat and hood were sold as one unit to the lady customer for a composite price."

The matter came before the Divisional Court by way of Case Stated at the end of June this year, when the appeal was dismissed.

Mr. Ernest Wurzal, to whom the writer is greatly indebted for this report, states that during the hearing a member of the court described the case as persecution and not prosecution, and the Lord Chief Justice, after hearing the arguments of Mr. J. P. Ashworth, who appeared for the appellant, stated that no offence had been committed and that he did not propose to give a reasoned judgment as he might say something he would regret, therefore he would merely say that the appeal was dismissed with costs.

COMMENT

The writer has felt justified in setting out at some length the salient features of this case and the judgment because it will be helpful to those who have to adjudicate upon cases brought under s. 9 of the Act of 1941 to know that the Divisional Court had no hesitation whatever in confirming the decision of the stipendiary magistrate to dismiss the informations.

In times of scarcity such as the country has suffered since the war, there is a natural reaction against traders who seek to compel a customer, who desires to buy an article in short supply, to purchase at the same time some other article not required by the purchaser, but it is clear that traders must, for their own protection, in certain cases, insist upon the purchaser who requires only one article, taking at the same time another for which there would be no sale by itself.

It is to be remembered that, apart from the defences relied upon by Mr. Wurzal as reported above, s. 9 (2) provides that it shall be a defence for a trader charged with an offence under s. 9 (1), to prove that without the fulfilment of the condition proposed there would be interference with arrangements made by him for the orderly disposal of his stocks amongst his regular customers.

Section 16 of the Act provides that offences under s. 9 may be punished on summary conviction with three months' imprisonment and a fine of £100 and on conviction on indictment with two years' imprisonment and a fine of £500, and by s. 16 (3) on the third or any subsequent occasion upon which a person is found guilty of an offence under s. 9, the court may, on the application of the prosecutor made with the consent of the Attorney-General, make an order preventing the offender during such period as the court thinks fit, carrying on the business in the course of which the transaction constituting the offence was effected.

By s. 16 (4), in the case of the conviction on indictment of a body corporate there shall be no limit to the amount of the fine which may be imposed. R.L.H.

No. 64.

MUSIC AND DANCING LICENCE—BREACH OF CONDITION

An East Kirby licensee appeared at Mansfield Magistrates' Court early in August last, charged with contravening a condition of the music and dancing licence granted to him in respect of his licensed premises contrary to s. 51 of the Public Health Acts (Amendment) Act, 1890.

For the prosecution, it was stated that the defendant took unfair advantage of other licensees by playing a radiogram on Sundays to attract customers. Defendant's music and dancing licence forbade music on Sundays. The prosecutor added that the police explained the conditions of the licence to the defendant soon after he became licensee at the house, but on May 27 last, a Sunday, music was found coming from the radiogram.

The defendant, who pleaded guilty, stated that it was an accident as his mother-in-law had switched on the radiogram in the living room without realizing that it was also plugged through to the public part of the premises.

Defendant was fined £2.

COMMENT

There have been numerous decisions in the High Court upon the many provisions of s. 51 which, it will be recalled, contain regulations to apply to places (not within twenty miles of the cities of London or Westminster), ordinarily used for public dancing or music, or other public entertainment of the like kind.

Although at one time there were many points in the section which required clarification, it can be fairly said that at the present time there are few legal issues of difficulty which arise under the section. Such difficulties as do arise are generally upon issues of fact, *e.g.*, is there evidence of *public* dancing, singing, music or other entertainment? Is the room utilized for one of these purposes so utilized more or less habitually?

The section gives power to the justices to impose such conditions as they may think fit upon the grant of a licence and for a penalty of £20 to be imposed in the event of a breach of condition being proved. There is also provision for a daily penalty of £5 in the event of the breach continuing after conviction.

(The writer is indebted to Mr. Edward Hooton, M.A., LL.B., clerk to the Mansfield Justices, for information in regard to this case.) R.L.H.

No. 65.

DANGEROUS DRIVING—UNUSUAL FACTS

A motorist, aged twenty-five, appeared at Sheffield Magistrates' Court on August 8 last, charged with driving his car in a dangerous manner, contrary to s. 11 of the Road Traffic Act, 1930.

For the prosecution, evidence was given that the defendant wanted to pass the bus at a certain point in the city. He was unable to do so, but was permitted by the bus driver to do so later. When the defendant's car had passed the bus he did not carry on in the normal manner but drew up in front of the bus and braked suddenly, nearly causing a collision. The car then travelled for three miles in the middle of the road at about five miles per hour so that the bus could not overtake it. Later the defendant again braked suddenly and there was nearly another collision. Passengers in the bus were in a nervous state.

Defendant was later interviewed by the police and told them that it was the bus driver's fault as the latter had prevented him from passing when it would have been safe for him to have done so.

Defendant pleaded guilty to the charge, and said that he was travelling one hundred yards in front of the bus when he pulled up and he denied that he had braked suddenly.

The chairman stated that defendant would be fined £5 and must pay £3 3*s*. costs. In addition he was disqualified from driving for twelve months and was ordered to take out a provisional driving licence until he had passed a driving test.

(The writer is indebted to Mr. Leslie Pugh, clerk to the Sheffield Justices, for information in regard to this case.) R.L.H.

No. 66.

THE FAILURE OF A FILM COMPANY TO SHOW SUFFICIENT BRITISH FILMS — A SUCCESSFUL APPEAL

A film company was prosecuted at Birmingham Magistrates' Court on April 10 last, at the instance of the Board of Trade, in respect of an alleged contravention of the provisions of the Cinematograph Films Acts, 1938 and 1948, and the Cinematograph Films (Quotas) Order, 1948. The charge alleged that the company, being an exhibitor, and in the quota period commencing on October 1, 1948, having exhibited to the public at a Birmingham cinema films registered as short films, and films registered as long films which were exhibited otherwise than as first feature films, did fail to exhibit such films registered as British films and as exhibitors' quota films to the extent of the prescribed percentage of the total exhibited length, contrary to the 1948 Order and s. 1, subs. (1), (3), (4) and (6) and (11) of the Cinematograph Films Acts, 1938 and 1948.

For the defendant company, it was intimated that there was no dispute that the quota required had not been shown, but it was contended that what had happened was beyond the control of the defendant company. The company had every desire to show British films, but it was not commercially practicable to fulfil the requirements owing to the character of the films available and the excessive cost. Evidence was given for the defendant company that the type of films available to comply with the quota was quite unsuitable for the type of audience patronizing the cinema concerned, who required action pictures and slapstick comedy.

The learned stipendiary magistrate came to the conclusion that the failure did not arise through circumstances beyond the control of the defendants, and imposed a fine of £50, and ordered the company to pay £13 13*s*. costs.

The company's appeal to quarter sessions was heard in August last, when it was stated on behalf of the Board of Trade that during the material period the company had shown only 8.6 *per cent.* of British supporting films instead of twenty-five *per cent.*, the due quota; 1,157 films were available to rank for quota in 1948 and the cinema showed only eighteen. An application for exemption from quota by the cinema had been refused.

The booking director of the defendant company handed in an analysis of the 1,157 films of which, he said, only fifty-six were suitable because of length or commercial practicability in an industrial district where audiences demanded a double feature of two long action-type films. The chairman of the local branch of the Cinema Exhibitors Association, supporting the appeal, said that audiences at the cinema in question demanded exciting action films with a story.

The Recorder of Birmingham, Mr. Paul Sandlands, K.C., allowing the appeal said that the character of the audience at the cinema had to be considered and he accepted that, in this case, they did not want anything clever, learned or high falutin. He was satisfied that the failure of the company to show the proper proportion of British films was due to circumstances beyond their control.

COMMENT

Section 1 of the Cinematograph Films Act, 1948, contains stringent provisions designed to support the British film industry. Subsection (1) provides that exhibitors of registered films to the public shall include British films among the films exhibited.

" Registered " is defined in s. 44 (1) of the Cinematograph Films Act, 1938, as meaning registered either under Part III of that Act or Part II of the Cinematograph Films Act, 1927.

Subsection (4) defines the expression " quota period " as meaning the year beginning October 1, 1948, and each succeeding year, and subs. (2) compels exhibitors who, during any quota period exhibit films registered as long films (*i.e.*, of more than 3,000 *ft.* in length) to exhibit as the first feature film on at least the prescribed percentage of the number of days on which such film is so exhibited, a film registered as a British film and as an exhibitor's quota film.

Section 3 (2) of the Act defines " first feature film " and " the prescribed percentage " is prescribed by the Cinematograph Films (Quota) Order, 1948.

The percentage prescribed for registered films is forty-five *per cent.*, and for " short films " or films registered as long films which are exhibited otherwise than as first feature films, the percentage is twenty-five *per cent.*

Section 1(6) of the Act of 1948 provides that any exhibitor failing to comply with the requirements of the section shall be guilty of a quota offence, unless the Board of Trade certify that his failure was due to circumstances beyond his control, or the exhibitor proves the fact to the satisfaction of the court.

By subs. (7) it is enacted that s. 1 shall expire on September 30, 1958.

By s. 11 of the Act of 1938, quota offences may be punished on summary conviction by a fine not exceeding £250.

(The writer is indebted to Mr. T. M. Elias, clerk to the Birmingham Justices, for information in regard to this case.) R.L.H.

No. 67.

THE WRONGFUL ACQUISITION AND DISPOSAL OF STEEL

A thirty year old company director and a limited company appeared at London Sessions early in August last, to answer an indictment containing twenty-six counts. Twelve of the counts alleged that the defendant director and the company had acquired quantities of steel sheets otherwise than in accordance with the provisions of art. 1 of the Control of Iron and Steel (No. 62) Order, 1948, and the remaining counts charged the defendants with the disposal of steel sheets contrary to art. 2 of the Order.

For the prosecution it was stated that 181 tons of steel worth £9,000 were acquired by the defendant director and the company between April and August, 1949, and were sold in part to a limited company and in part to an individual. The defendant director had admitted to an official of the Ministry of Supply that he had no authority to buy or sell steel, but said that he thought it was free for export and therefore no licence was required. The prosecutor stated that authority was necessary even if the steel was intended for export.

The deputy chairman, Mr. A. W. Cockburn, K.C., imposing fines of £1,000 on each defendant and ordering payment of £21 costs by each defendant, stated that he accepted that the defendant director, who bore an excellent character, had no evil intention to avoid the regulations, but it was necessary to make the punishment substantial as a warning to other people in the trade.

COMMENT

Article 1 of the 1948 Order prohibits any person from acquiring or agreeing to acquire any material mentioned in sch. 1 to the Order save that material mentioned in Head 6 of the schedule may be acquired by any " Department " named in sch. 2 to the Order. Head 6 of sch. 1 relates, *inter alia*, to steel in the form of sheets both coated and uncoated. Schedule 2 sets out the names of most of the principle Government Departments.

Article 2 of the Order prohibits any person from disposing of any material mentioned in sch. 1 except to a person acquiring that material in accordance with the provisions of the Order.

(The writer is indebted to Messrs. Roy S. Wildman & Co., solicitors, London, for information in regard to this case.) R.L.H.

"SOME MEMORANDUM OR NOTE IN WRITING"

Despite the prevailing lip-service to the idea of democracy it would seem that the *Fuehrer* principle, of which so much was heard in the 1930s, is an unconscionable time a-dying. Politicans may prate of equality ; the paradox remains that leadership is a supremely popular conception. The Champion of boxing, tennis, golf or billiards is granted a triumph recalling that of a conquering Roman general ; the Corporation of Costers acclaim their Pearly King ; village-communities their May Queen ; every British seaside-town enthrones its loveliest Bathing Beauty. Husky soldiers sit enraptured, their eyes filled with tears, at the voice of the Sweetest Girl in the World, singing them songs of moon in June ; and buxom young women in their teens swoon away, like any Jane Austen heroine, on hearing the mellifluous tones of the Greatest Crooner of All. Across the Atlantic hard-faced business-men worship at the shrine of Miss Florida, Miss America and even Miss Universe, and college-girls vie with one another in according to their favourite baseball-player semi-divine honours. In Europe and the East hereditary crowns may fall and ancient thrones crumble into dust ; but the people of the New World continue as determinedly as ever to set upon the brow of the hero of the moment, the laurel-wreath of victory.

The vociferous tones of press and cinema have long since accustomed us to these extravagances. Now comes a fresh reminder that, to adapt the words of Lord Macmillan (*McAlister* v. *Stevenson* [1932] A.C. 562), the categories of nonentity-worship are never closed. From distant California the Associated Press reports the double honour, accorded to a private soldier of the United States Army serving in Japan, of Champion Letter-Writer and Champion Letter-Receiver. Six hundred and seventy-six long love-letters have been written by this paragon of suitors, who has received in return no less than five hundred and fifteen affectionate missives from his affianced bride. This trial of endurance has lasted for the space of five months ; assuming that the marriage ever takes place, one wonders what more this voluble couple can find to say to each other in the fifty or so years that lie ahead of them.

The first point that will strike the lawyer who considers the implications of the matter is the paradox that the current craze for speed, and modern conditions of mobile warfare, have yet left the soldier sufficient leisure for the drawing and engrossing of some four lengthy epistles a day, and for the daily perusal and consideration of more than three replies of equal length. Gone for ever are the days when the privilege of making an informal will, necessitated by the rush and bustle of camp life in the Roman Legion, had perforce to be granted to the soldier *in expeditione* (Just. *Inst.* II, 12 (1-4)). The man who is capable, in the midst of military pre-occupations, of dealing with such masses of papers is certainly wasted in the ranks of an ordinary service unit ; his abilities demand nothing less than a General Staff appointment of the highest seniority, with a room-full of clerks to deal with routine correspondence.

The next consideration is the apparent contradiction between the somewhat repetitive protestations of lifelong fidelity which such letters must contain and the notoriously ephemeral duration of a large proportion of marriages in the State of California. Judging by matrimonial practice among that section of the State population which occupies itself in Hollywood, the observer would conclude that monogamy is more honoured in the breach than in the observance. One need not be a cynic to hold the

view that a man " doth protest too much " when the expression of his feelings demands the exchange of nearly twelve hundred letters in the space of twenty weeks ; nor need one be unduly influenced by the writings of Siegmund Freud to come to the conclusion that one is in the presence of some psychological complex which cries out for analysis.

Far less inhibited was the ardent suitor in the spacious days of the eighteenth century. Don Juan, the greatest lover of all time, also set out to achieve a numerical record, but he did not limit his activities to one state—nor to one woman, either ; nor does it appear that he confined himself to mere letter-writing. Mozart's great opera *Don Giovanni* portrays him as manifesting his collector's instinct by keeping up to date the famous *catalogo* —a complete list, arranged according to domicil, of the ladies to whom he had granted his favours :

" In Italy, six hundred and forty ; in Germany two hundred and thirty-one ; one hundred in France ; ninety-one in Turkey ; but in Spain (up to date) one thousand and three. Peasant-girls, ladies' maids, town-girls, countesses, baronesses, marchionesses, princesses—women of all shapes, all ranks, all ages . . . In winter he likes them fat ; in summer he prefers them thin ; tall women he calls majestic, tiny ones he compliments as dainty."

A catholic taste, one would comment ; but Mozart's librettist makes it clear that Juan has no interest in women *as such*—he is simply trying to break a record : *Delle vecchie fa conquista, Pel piacer di porle in lista*—" he seduces even the elderly ones, just for the satisfaction of putting them down in his list." In other words he was aiming at the World Championship of Seduction ; and who will dare dispute his right to the title ?

But we must return to our American soldier-lover. One thing above all will be noted by the lawyer with grave misgiving—the gratuitous piling-up of written evidence. Has the man never heard of that wisest of maxims—" Do right, and fear no man ; don't write, and fear no woman ? " Suppose this prolific word-spinner should succumb to the charms of some attractive geisha-girl, break off his engagement and find himself defendant in an action for breach of promise ! The legal mind recoils from the prospect of monotonous months—perhaps years—spent in the meticulous typing and examining of fair copies in quintuplicate, the swearing of affidavits of documents, the collation of an agreed bundle of correspondence, the consideration by Counsel of the admissions therein contained and, at the trial, the slow, careful reading aloud and the laborious note-taking by the Judge. And, while all this is going on, what is to happen to the term's list ? How many hundreds of would-be litigants, hopelessly deferred from session to session, will cavil at the law's delay ?

However, the output of six hundred and seventy-six love-letters in five months can scarcely be put down to inadvertence, and it can only be supposed that this misguided young man has placed his head deliberately in the noose. In that event, his course of conduct has perhaps been dictated by a misreading of that portion of the Statute of Frauds, 1677 (29 Car. II. c. 3), which runs as follows :

" No action shall be brought whereby . . . to charge any person upon any agreement made in consideration of marriage . . . unless the agreement upon which such action shall be brought or some memorandum or note thereof shall be in writing . . ."

If that be the explanation, he has certainly succeeded in his aim. Presumably the statute has been incorporated into the common law of the United States, and in the expression " *some* memorandum or note in writing " the italicised word is obviously to be understood in the emphatic sense of modern American usage.

A.L.P.

" THERE ; BUT FOR THE GRACE OF GOD "

In administering Justice, how often we feel,
When with petty offenders we have to deal,
That its easier to grant justices' might,
Than always to do what is clearly right.
Do we think, in the cases we have to try,
" There, but for the grace of God, go I."

In the Juvenile Court one may be amused,
With boyish faces, mostly confused,
Or when listening to a treble pipe
Explaining some prank of an innocent type.
Yet could we not say, as a boy so high,
" There, but for the grace of God, go I."

When a pert young man steps into the dock,
Look and guise both seem to mock,
With guilty fraud and low intent,
It's clear he's very well content.
And yet think I, 'cept for nature's ply,
" There, but for the grace of God, go I."

A tattered old man before the Bench,
Gives one's heart a sudden wrench.
It seems he's seen more prosperous days
'Ere falling through life's uneasy ways.
Swiftly thought just answers, " Why,
" There, but for the grace of God, go I."

The drunks and dissolute vagabonds, all
Those guilty ones beyond recall,
In serried ranks before me now,
I see them all in silence, bow,
And hear a whispering, shuddering sigh,
" There, but for the grace of God, go I."

W. S. A. Robinson,
Glossop.

PERSONALIA

OBITUARY

Lord Maenan, G.B.E., K.C., died at Ellesmere, Cheshire on September 22, at the age of ninety-seven. He was presiding judge of the Court of Passage at Liverpool for forty-five years, retiring in 1948 when he was over ninety years of age. He was called to the Bar by the Inner Temple in 1879 and worked on the Northern Circuit. He took silk in 1895. He was made Recorder of Bolton in 1901 and judge of the Liverpool Court of Passage in 1903. Among his many appointments he was Judge of Appeal for the Isle of Man from 1918-1921, vice-president of the War Compensation Court from 1920-1928, and chairman of the Committee on Summary Appeals in 1932. In 1905 he had become a Bencher of the Inner Temple and served as treasurer in 1926 and Master of the Garden in 1927.

NOTICES

Michaelmas quarter sessions will open at the Sessions House, Knutsford, Cheshire, on Tuesday, October 2, at 10.30 *a.m.*, and the adjourned quarter sessions at the Castle, Chester, on Thursday, October 4, at 10.30 *a.m.*

The next court of quarter sessions for the borough of Guildford will be held on October 6, at the Guildhall, at 11 *a.m.*

The next court of quarter sessions for the borough of Grantham will be held on October 10.

The next court of quarter sessions for the city of Hereford will be held on October 12, at 10.45 *a.m.* at the Shirehall.

The next court of quarter sessions for the borough of Bridgwater will be held at 10.30 *a.m.* on Friday, November 2.

PRACTICAL POINTS

All questions for consideration should be addressed to "The Publishers of the Justice of the Peace and Local Government Review, Little London, Chichester, Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.

1.—Acquisition of land—*Compulsory purchase—Notice of entry—Tenant for a year or less.*

Land subject to a compulsory purchase order is in the possession of a tenant for a year or less. Notices to treat and of entry have been served on the superior interests but those interests have not yet been acquired.

Is the acquiring authority, by virtue of its "possession" under the notice of entry, able to give to the tenant a valid notice to quit, or must they, if they require possession before such superior interests have been acquired (in the absence of agreement with the tenant) serve the tenant with notice to treat and notice of entry?

The general note to s. 121 of the Lands Clauses Act, 1845, on p. 282 of the *Encyclopaedia of the Law of Planning*, vol. II, suggests that notice to quit can be given only "after acquiring the lessor's interest." AMG.

Answer.

In *Syers* v. *Metropolitan Board of Works* (1877) 36 L.T. 277, Jessel, M.R., sitting as a judge of first instance, upheld by the Court of Appeal, held that a tenant for a year or less was not entitled to notice to treat under s. 18 of the Act of 1845. We do not consider that the Acquisition of Land, etc., Act, 1946, has altered this. Upon your point about notice to quit, what the learned editor of the work cited by you calls the "implication" of s. 121 of the Act of 1845 (*viz.*, that where a tenancy for a year or from year to year has ended by effluxion of time or by notice to quit no compensation is payable under that section) was stated by Jessel, M.R., in the same case to be the effect of that section. The acquiring authority had there actually completed their purchase and then gave the tenant three months' notice, as their vendor could have done, in accordance with his tenancy agreement. The tenant had therefore not been ousted from any legal right, and had no claim to any compensation. We agree that an acquiring authority which has not yet acquired the lessor's title cannot effectively give such a notice. But the real point of s. 121, according to the opinion of Jessel, M.R., in that case (which is generally accepted) is that, if prepared to compensate under the section, the acquiring authority can oblige the tenant for a year, from year to year, or for a less term to give them possession before expiry of his term. In other words, their "requirement" coupled with payment or tender under that section is something different from "notice to quit," in the sense of the law of landlord and tenant. Although we do not think the point has been judicially determined, we see no reason in principle against an acquiring authority's proceeding under s. 121 against the tenant, as soon as by virtue of a statutory power in that behalf it enters into possession under the notice of entry as against the lessor.

2.—Club—*Application for registration—Right of appeal by case stated—Defence (General) Regulations, 1939, reg. 55c.*

An application was recently made under the Licensing (Consolidation) Act, 1910, for registration of a club, and the chief constable under the Defence (General) Regulations, 1939, Part IV, No. 55c, objected under para. 4a.

The applicant appealed to the magistrates and after hearing the evidence the bench retired. The chairman then announced it was rather an involved question and the bench were quite unanimous in feeling that a club of this sort would be a great advantage to the neighbourhood, but that when the special circumstances of the establishment were considered it would not be at all easy or even possible to run the guest house and the club on the premises as at present suggested and that a club licence would not be granted.

An application has since been made to the magistrates to state a case.

The appeal was decided on facts put forward in evidence and no point of law was raised by either side.

(1) Is there anything in the chairman's remarks to justify the application for a case to be stated?

(2) Should not the justices refuse to state a case, there being no point of law involved? NIS.

Answer.

The point of law in this case would seem to be that the justices unanimously, although very ambiguously, appeared to decide the point of objection in the applicant's favour and then refused the appeal on grounds outside those specified in reg. 55c (4) of the Defence (General) Regulations, 1939.

It is not for the magistrates' court, as an appellate tribunal, to consider the extent of the applicant's difficulties in conducting the club so as to conform with the law: unless the justices are satisfied that the club is not required to meet a genuine and substantial need their duty is to authorize the registration of the club.

3.—Guardianship of Infants—*Orphan children—Application by grandmother—Position of stepfather.*

An application for custody of two children aged nine years and seven years respectively, under the Guardianship of Infants Act, 1886 and 1925, had been made by A, their grandmother, whose son was the father of the said infants and who died intestate without appointing guardians of the said infants. The mother of the said infants was married again to B, who is a serving soldier in Germany, and she has since died intestate without appointing guardians of the said infants and they are now in the care of A.

I shall be much obliged if you will advise me: (*a*) Whether A, the grandmother of the said infants, can make the application to the court under the Guardianship of Infants Acts for custody, or (*b*) Whether the application should be made by the infants themselves, and (*c*) In either case, whether B, their stepfather, should be summoned as a respondent, and (*d*) Whether B is liable for the maintenance of the said infants.

Answer.

The grandmother may apply by virtue of s. 4 (2A) of the Guardianship of Infants Act, 1925 (*see* Children Act, 1948, s. 50). It is desirable that B, who may be interested in the welfare of the children, should be made a respondent and given an opportunity of being heard. He is not liable for their maintenance. The position is now regulated by s. 42 of the National Assistance Act, 1948.

4.—Highway—*Footpath—Erosion by river—Deviation.*

A public footpath runs alongside a river in the council's district and the council have erected a fence between the footpath and the river. As a result of erosion this fence has now disappeared into the river. I shall be grateful if you can inform me whether:

(*a*) Members of the public have a right to make a new footpath on the adjoining land, and

(*b*) The council has an obligation to erect a fence between this footpath and the river. ATIO.

Answer.

A dedicated highway can include a wall or fence, repair of which is then on the same footing as repair of the highway, but on the facts given we do not suppose the council to be under any obligation in this case to maintain the fence. There is nothing to suggest a right to deviate on to adjoining land; a footpath of this sort normally comes into existence by public use, from which dedication is eventually presumed, and deviation if not prevented by the landowner may ultimately raise a presumption that a fresh highway has been dedicated. Meantime, however, the normal rule is that a highway which ceases physically to exist, as by the falling away of a cliff top, ceases to exist in law also, and the persons or authority liable for its repair are excused—though to the extent that it can physically speaking be still used the right of use and duty to repair remain.

5.—Highway—*Private street—Accumulations of rubbish—No statutory nuisance.*

Question 69 of the Law Society's final examination appearing at 115 J.P.N. 360 is of interest, since my council has a somewhat similar problem. In this urban district there is a short length of estate road ending in a *cul-de-sac*, which has not been taken over by the council as a public highway. It is provided with the usual services such as main drainage and a water supply by temporary main. The road surface has not been made up to the requirements of the local authority in advance of dedication, and there is no intention to take private street works action. Houses have been built on two housing sites served by the estate road, and the remaining sites are being cultivated as allotments. The owner occupier of one house has complained to the council that the owner occupier of the other, as a private householder who is a builder, has deposited a heap of builder's rubble, etc., on the carriageway thereby causing an obstruction and an alleged breeding ground for rats. Further along, the owner of another building plot has deposited in the same way a heap of tradesman's cardboard cartons, and the council's correspondent has complained similarly as to this.

As far as the writer is aware, apart from any action which might be taken under the Prevention of Damage by Pests Act, 1949, to exterminate rats if found to exist, no statutory authority appears to exist to enable the council to deal with the accumulations referred to, outside

the nuisance provisions of the Public Health Act, 1936. I am doubtful as to the enforceability of a statutory notice since I am not sure that in the circumstances mentioned a statutory nuisance exists. There is no danger to public health. AWL.

Answer.

This illustrates the popular notion that whenever a grievance exists some public authority has a power, and probably a duty, to deal with it. The grievance here seems a private matter: the owners of plots in the street may have some rights *inter se* or against their vendor, or against the owner of the soil of the private street, under covenant or otherwise, but we cannot see any power residing in the council to intervene. The examination question at p. 360, *ante*, related to land of a different sort, to which s. 33 of the Town and Country Planning Act, 1947, is *prima facie* appropriate. We should not regard that section as applicable here, first on facts, because amenity must be "seriously injured" before the section applies, and secondly as a matter of law, because (whatever is meant by the loose phrase "other open land") it does not in the context where the section uses it seem apt to describe a private street.

6.—Highways—*Fouling of footpaths by cattle.*

In various parts of this district nuisance is being caused at intervals by the depositing of cattle dung whilst farmers are driving their cattle to the pastures. At the present time the cattle are allowed to leave the farmyard and find their way to the pastures about half a mile away and there is no attendant driving the cattle until the last beast has left the farmyard. I am afraid that the provisions of s. 72 of the Highway Act, 1835, are of little use, as it could not be proved that the farmer is wilfully driving his beasts on the footpaths. As the nuisance caused by the cattle is reaching serious proportions in this district, I would be pleased if you could advise what remedy a local authority have to prevent this nuisance, and what remedy any private individual could have against the farmer if their shoes or clothing are damaged by the deposit of the cattle. ALM.

Answer.

We dealt at 109 J.P.N. 538 with a query which differed from this only in that we are here told that the cattle find their way without a drover. Where their milking place or byre is separated from their pasture by a highway, this is common. Although the footpaths are not dedicated for use by cattle (as the carriageway is), and their walking on the footway is therefore presumably a civil trespass, it does not, except as provided by s. 72, *supra*, constitute an offence. As regards a civil remedy, we greatly doubt whether the individual mentioned has any.

7.—Husband and Wife—*Maintenance arrears—Defendant appears by solicitor in answer to summons—Whether justices should issue warrant.*

A wife issued a summons against her husband in respect of arrears of maintenance due under an order made under the Summary Jurisdiction (Separation and Maintenance) Acts, 1895-1925.

The husband appeared at the hearing by his solicitor and not personally.

Having regard to the provisions of the Money Payments (Justices Procedure) Act, 1925, the justices adjourned the hearing and requested the defendant's personal appearance as required by s. 8 of the Money Payments Act.

At the adjourned hearing the defendant again appeared by a solicitor and not personally and in his absence the justices could not proceed to make the necessary inquiry.

The justices further adjourned the hearing of the summons.

On the further adjournment and if the defendant does not appear personally can the justices issue a warrant for non-appearance having regard to the fact that the defendant did appear by a solicitor? (It is appreciated that the summons can be withdrawn and the enforcement of the arrears dealt with by the issue of a warrant in respect of the arrears.) SAN.

Answer.

Arrears are recoverable as under an affiliation order, Summary Jurisdiction (Married Women) Act, 1895, s. 9, and by s. 4 of the Bastardy Laws Amendment Act, 1872, the procedure is by issue of a warrant, a summons not being provided for. The issue of a summons is a common and convenient practice, but if the defendant does not appear personally the court cannot adjudicate. Appearance by solicitor will not suffice. This was so before the passing of the Act of 1935, but that Act makes it even clearer that a commitment cannot be issued unless he has attended personally in answer to a summons or by virtue of a warrant of apprehension. In the present case, therefore, the summons should be withdrawn and a warrant issued on a fresh sworn complaint.

8.—Husband and Wife—*Maintenance arrears—Time limit for recovery—Appropriation of payments.*

Section 2 (1) (*d*) of the Limitation Act, 1939, reads as follows: "The following actions shall not be brought after the expiration of six years from the date on which the cause of action accrued, that is to say: (d) actions to recover any sum recoverable by virtue of any enactment other than a penalty or forfeiture . . ."

Do you consider that this would apply to the enforcement of arrears under wife maintenance orders, affiliation orders, and all orders similarly enforceable? If so, would you agree that "actions shall not be brought" should be construed as meaning that "no complaint may be laid in respect of" any such arrears? Do you hold that a maintenance contribution accrues due on the date when it first becomes due or at the expiration of the week for which it is payable? How do you interpret, "On which cause of action accrued"?

If you are of opinion that the section does apply, it would seem that collecting officers may have some difficulty in deciding which particular arrears are statute barred because it is always arguable whether a payment made by a defendant is in respect of arrears or a current week's payment.

If a man disappears and the wife lays a complaint in respect of arrears at the expiry of six years, will that preserve her right to recover if he should at some future date be traced? If so, she must lay a fresh complaint each six years, and at some future date it is possible to face a man with two or three complaints for arrears accrued during such periods of six years each. S.D.D.N.

Answer.

Section 31 of the Limitation Act, 1939, defines "action" as including any proceeding in a court of law. It therefore appears that s. 2 (1) (*d*) applies to the recovery of arrears under the orders in question, and that making the complaint upon which the warrant is issued is bringing an action within the meaning of the Act. As there is no provision that the weekly payments are to be made in advance, we consider that the first payment becomes due at the end of a week from the making of the order and thereafter at intervals of a week.

"A cause of action" accrues whenever payments become in arrears.

The general rule is that in the absence of specific appropriation by a debtor, sums paid on running accounts should be allocated to the oldest debts: *see* P.P. 3 at 114 J.P.N. 724 and P.P. 5 at 115 J.P.N. 268.

We think it would be in order for a complaint to be made and a warrant issued at six year intervals. If the defaulter were arrested the justices would exercise their discretion as to enforcement and remission.

9.—Licensing—*Off-licence—Whether obligation to keep premises open throughout period of permitted hours.*

In the town of C there are three grocers' shops, each of which holds a full justices' off-licence. These licences were originally granted prior to 1904, but none of the present licensees are able to claim protection as an old off-licence. It has been brought to the notice of the bench that these shops are not keeping to the licensing hours, *i.e.*, they are only opening for the sale of liquor during the morning and not during the evening hours. It has on inquiry been discovered (1) that they have never opened for the full hours, and (2) the licensed grocers throughout the locality do not do so either.

Can you give any authority for exemption of these shops from opening the whole of permitted hours? NANN.

Answer.

Sections 1 and 2 of the Licensing Act, 1921, prescribe the hours during which intoxicating liquor *may* be sold at the licensed premises. It is nowhere imposed as an obligation that intoxicating liquor *shall* be sold throughout the period of permitted hours.

Thus, if the off-licensed premises are filling a public need by so concentrating their business as to require them only to remain open during the morning "permitted hours," there is no ground for legal complaint.

10.—Licensing—*Special order of exemption—Garden open to public every Thursday during summer—Special occasion or occasions.*

The licensee of the X Arms applies for a special exemption from 2.30 *p.m.*–5 *p.m.* on every Thursday between May 24 and September 29, on which the neighbouring hall and gardens are open to the public.

Section 57 of the Licensing Act, 1910, refers to "special occasion or occasions," the use of the plural appears to envisage a single application for more than one occasion, but in *R.* v. *Lancashire JJ. Ex parte Commissioners of Customs and Excise* (1934) 98 J.P. 307, it was held that an application in respect of Sundays, when excursion steamers ran, was of a general nature; and the present application appears to be almost identical.

Can you please advise me whether the justices would be in order in allowing a single application in respect of every day when the hall and gardens are open to the public? Or whether there must be a separate application in respect of each such day? NING.

Answer.

In our opinion, it is entirely within the discretion of the justices to decide whether the opening of the gardens to the public is a special

occasion in connexion with which the permitted hours should be extended. If they decide that it is a special occasion, it is then in their discretion to grant a special order of exemption either as a single order covering all the occasions or a number of orders each covering a single occasion.

R. v. *Lancashire JJ. Ex parte Commissioners of Customs and Excise* (1934) 98 J.P. 307, mentioned by our correspondent, may be distinguished: in that case what purported to be a special occasion was really no more than that large numbers of holiday-makers were attracted every day to the district in which the licensed premises were situated, but that on Sundays the licensed premises were closed. The grant of special orders of exemption was held to be unlawful, secondarily because the occasion was a "general" one.

11.—Local Land Charge—*Date of registration—Date on which charge arises.*

Paragraph (1) of rule 12 of the Local Land Charges Rules, 1934, provides that applications for registration and priority notices delivered by post or under cover during the hours in which the office of the local registrar is open for registration shall be treated as having been made or given immediately before the closing of the office for that day.

1. Does this require the registrar to register charges arising from his own local authority within the day on which the charge arises?

2. For the purpose of deciding when the charge arises:

(*a*) Should the date on which the local authority decide on action which results in a charge (either on their own volition or on the adoption of a recommendation of a committee) be the date of the charge; or

(*b*) Is the date of the instrument, *e.g.*, statutory notice, claim for expenses, etc., the date of the charge; or

(*c*) Is such date that on which the notice is received by the person concerned.

3. If charges should legally be entered in the register on the day they arise, what action if any, lies against the registrar for failure to enter, and as a result a "clear" certificate is given, when in fact a charge exists by reason of the decision of the local authority. AHIS.

Answer.

1. We do not think the rule can be said to require the registrar to register a charge of his own local authority on the day on which it arises, but plainly his duty to his local authority requires him to do so.

2. In our opinion, the date of the instrument, if the charge is one created by an instrument such as you mention.

3. We are not sure that this question will arise, in view of our answer to 2. If a registrar, having failed to register a charge as soon as it is registrable, issues a certificate by which a person suffers loss, we see no reason in principle why an action for negligence should not lie against him: *see* also s. 17 (5) of the Act of 1925.

12.—National Assistance Act, 1948—*Residence determined by Minister—Subsequent recovery proceedings.*

Section 32 of this Act provides for financial adjustment between local authorities in so far as the authority providing accommodation, etc., may not be the authority of the area of residence in relation to any particular individual.

Subsection (3) of the section provides that any question arising as to the ordinary residence of a person shall be determined by the Minister of Health.

Section 56 of the Act provides that any sum due under the Act to a local authority shall be recoverable summarily as a civil debt without prejudice to any other method of recovery and that proceedings may be brought at any time within three years after the sum became due.

A case has arisen concerning authority A and authority B of which the following is an outline:

(*a*) In relation to an individual C, authorities A and B put to the Minister of Health a case for ruling as to the ordinary residence of C and the Minister ruled that C was ordinarily resident in the area of A; it appeared from this that by implication authority A would be liable for the cost of providing accommodation for C.

(*b*) After this case of residence had been decided by the Minister, what appeared to be a similar case was submitted to the Minister of Health for decision concerning authorities A and D, and in that case the Minister gave a decision which appeared to follow the principles of the "first case," but went on to express an opinion that the authority liable to provide accommodation under Part III of the Act, by virtue of para. 10 of sch. 6 to the Act, was entitled to be repaid by the other authority the costs of the provision of such accommodation. The attention of the Minister was drawn to the fact that there appeared to be some discrepancy between the two cases quoted, and he then replied that in his view in the first case, although authority A were liable for provision of accommodation for C, authority B were liable to repay the cost of this maintenance by virtue of s. 19 (2) of the Act. This view was conveyed by A to B, but B declines to accept the accuracy of it or to take action on it; the Minister of Health has been informed of this but states that he cannot take any action in the matter and that it must be left to A "to take proceedings against B." It is thought that this must mean proceedings under s. 56 of the Act.

Is it agreed that this is the correct course for A to take, *i.e.*, by complaint in the petty sessional division covering authority B, or is any other course open to A? A JOHNIAN.

Answer.

Section 56 begins "without prejudice," so that proceedings in the county court, or even in the High Court if the amount justifies them, are not barred, but normally summary proceedings would be the most proper.

13.—Game Act, 1831—*Penalties—Destination.*

Stone states that penalties under the Game Act, 1831, are applicable to the general rate fund of the borough or district, quoting for authority the Local Government Act, 1933. *Halsbury* says the same, but quotes for authority the Rating and Valuation Act, 1925. The Game Act, 1831, itself provides for payment to the use of the general rate of the county, and 5 & 6 William IV, c. 20 (since repealed), gave half the penalty to the informer. The authorities quoted in the books mentioned are not clear though it may be that the point is governed by article 13 of the Overseers Order, 1927 (S.R. & O. 55). I shall be grateful if you can throw light on the matter. ALT.

Answer.

The word "overseers" in s. 37 of the Act of 1831 is by the Overseers Order, S.R. & O. 1927, No. 55, to be read as meaning "rating authority" and by the sections of the Local Government Act, 1933, cited in the textbooks the money when paid to the rating authority goes into the general rate fund. So far, the matter is clear, but it is mere accountancy, and does not settle the question whether the rating authority has the obligation which formerly attached to the overseers by s. 37 of the Act of 1831, of paying the money out again "To the use of the general rate of the county." The county rate was finally got rid of by s. 120 of the Local Government Act, 1948, but the words just quoted stand unrepealed as do the next following words "whether the same [*i.e.*, the parish] shall or shall not contribute to such general rate." The question you ask is one which Parliament ought to settle, when it tackles the overdue reform of the Game Acts. There can be little money in it either way but, looking especially to the last quoted words as showing an intention to benefit the county, we incline to think the rating authority should pay the money over.

14.—Physical Training and Recreation Act, 1937, s. 4 (1)—*Playing fields—Golf course—Centres.*

Generally does s. 4 (1) of the Physical Training and Recreation Act, 1937, empower a local authority to acquire land to be used as a golf course? In particular:

1. Can a golf course be construed as a "playing field"?

2. What is the meaning of the word "centre" in this subsection? A PLAYMATE.

Answer.

1. We see no reason to doubt this. We believe s. 69 of the Public Health Act, 1925, the precursor of the power here, has been used for this purpose.

2. It is probably incapable of precise definition. We doubt whether it would cover a club house for a single golf club or other club; otherwise we think it means pretty well any sort of accommodation for the specified purposes.

15.—Probation—*Order for payment of compensation—Commission of further offence—Effect on order—Criminal Justice Act, 1948, ss. 3, 5, 8 and 11.*

I should appreciate your guidance on the following point:

A man is placed on probation at court A for larceny and is ordered to make restitution of a sum of £10 at the rate of 10*s.* a week under s. 11 (2) of the Criminal Justice Act, 1948.

A month or so later the man appears before court B on a fresh charge of larceny and is sentenced to three months' imprisonment, the original offence at court A being taken into consideration by court B under s. 8 (7) of the Criminal Justice Act, 1948.

Is it your view that the man is no longer under an obligation to make payment of restitution to court A, and if this is so, should any payments that he has already made be refunded to him?

I would add that no reference was made to the order of restitution made at court A when he was dealt with at court B. STAT.

Answer.

The order for payment of compensation is no part of the probation order, but is a separate order, *see* s. 11 (2), and is distinct from the probation order, *see* s. 3 (3). If the offender is sentenced for his original offence, the probation order comes to an end, *see* s. 5 (4), but that does not, in our opinion, have any effect upon the order to pay compensation which can be enforced under s. 11 (3).

16.—Real Property—*Controlled selling price—Building materials and Housing Act*, 1945, s. 7—*Housing Act*, 1949, s. 43.

We act for a client who is the owner of a new bungalow erected in 1947 under a building licence which controls the selling price to £1,240. He agreed to exchange this freehold bungalow for a terraced house in London held under a 999 years lease and we are instructed there is to be no cash or other payment for equality of exchange. The present owner of the London house is aware of the controlled price on the other property. By reason of s. 7 (3) of the Building Materials and Housing Act, 1945, we are concerned as to whether we should insist on the London house being properly valued to satisfy ourselves that this property is not worth more than £1,240, for should it be of greater value the maximum selling price would then in effect be exceeded by evasion. Our client considers the two properties to be of an equal value at £1,240, and would not wish to have the expense of a valuation if this can be avoided. There is also the possibility that our client may go abroad in the near future in which case he would sell the London house and the sale price then may possibly well exceed £1,240. Do you think it is our duty to insist on the valuation and, should our client not be prepared to go to this expense, to refrain from carrying through the transaction?

ASO.

Answer.

In *Johnson* v. *Youden and Others* [1950] 1 All E.R. 300; 114 J.P. 136, the partner who was convicted had continued acting in the matter after becoming aware of what Lord Goddard, C.J., called "obviously a colourable evasion." Our view is that:

(i) You should call your client's attention to the Act and in particular to s. 7 (3). This we gather you have already done;

(ii) It would be prudent to point out to him that if he should succeed within any near future in selling the London leasehold for more than £1,240, this would at least be evidence in any proceedings against him thereafter;

(iii) The responsibilty is his own, for what he does, and we do not think you are imperilled by *Johnson* v. *Youden, supra*, unless (*a*) there is something in your client's communications to you which throws doubt upon his *bona fides*, or (*b*) the London house seems (when you look into the title or otherwise) to be so plainly worth more than the country house that an experienced solicitor cannot regard the one as a fair equivalent for the other.

17.—Road Traffic Acts—*Previous convictions—Proof—Evidence of same names, address and national registration number.*

I have noted with interest your replies to P.P. No. 9 at 115 J.P.N. 80 and P.P. No. 17 at 115 J.P.N. 350. Even if the defendant is not in court and is not represented by a solicitor surely the magistrates ought to take note of previous convictions where the police are able to prove that the present defendant has the same names and address and national registration number and corresponding age as a person to whom a record of previous convictions relates.

I shall be glad to have your views.

J. OTHONO.

Answer.

On the authority of *Martin* v. *White* (1910) 74 J.P. 106 (*see* particularly the last few sentences of Lord Alverstone's judgment) we think that if evidence were given as suggested in the question a court might hold that identity had been established. It would still, we think, be necessary to produce the proper documentary evidence of the previous convictions before it could be said that they had been proved against the defendant.

18.—Road Traffic Act—*Trailer—2½ cwt. roller drawn behind a van—Is this a trailer?*

I write to ask whether you will kindly let me have your opinion as to whether a roller, weighing approximately 2½ *cwt.*, can be regarded, when being drawn by a motor van, as a trailer within the definition of the above section (and, therefore, of the 1930 Act), as it has been suggested that a roller is not a vehicle?

It will be appreciated if you will quote any authority of which you may be aware.

JUM.

Answer.

We can find no direct authority on the point, but we think that on the reasoning in *Garner* v. *Burr and Others* [1950] 2 All E.R. 683; 114 J.P. 484, it is probable that a roller would be held to be a trailer within the meaning of the Road Traffic Acts.

19.—Shops Act, 1950—*Sunday trading—Fish and chip shops.*

My attention has been drawn by the shops' inspector of the council to the fact that two fried fish and chip shops, which are next door to each other, have been open on Sundays for the purpose of serving customers with fried fish and chips. One of these shops has been selling fried fish and chips for consumption off the premises, but the other shop has a notice exhibited on the premises, informing customers that fried fish and chips sold to them must be consumed on the premises. Section 47 of the Shops Act, 1950, provides generally that shops shall be closed for the serving of customers on Sunday, with the proviso to the effect that shops may be open for the serving of customers on Sundays for the purpose of any transaction mentioned in sch. 5 to the Act. By sch. 5 a shop may be open on Sunday for the serving of customers with meals and refreshments whether or not for consumption at the shop at which they are sold, but not including the sale of fried fish and chips at a fried fish and chip shop. My own interpretation of these provisions is that an offence is committed by a fried fish and chip shop not only when it sells fish and chips for consumption off the premises, but also where it sells fish and chips for consumption on the premises, and that the only means by which such shops could sell fish and chips in the district would be by virtue of an order which the council make each year under s. 51 of the Act. I have always held the opinion that if a shop sold other meals as well as fried fish and chips they could quite legitimately remain open on Sundays for the service of meals, even though one of the meals constituted fried fish and chips. A difficulty arises with the meaning of the word "meal." In *Binns* v. *Wardale* [1946] 2 All E.R. 100, *alias Wardale* v. *Binns* (1946) 110 J.P. 246 it was held that even a loaf of bread could be considered a meal or refreshment. Could a person be said to contravene s. 47 of the Act if, apart from fish and chips, he only sold cups of tea and bread and butter? The question is, when does a fried fish and chip shop become a general restaurant, and to answer that question I think that the facts in every case must be considered. If you can only purchase fried fish and chips and the usual etceteras at the shop it is definitely a fried fish and chip shop. If, on the other hand, you can at any time during the opening hours of the shop, not only on Sundays but during the week as well, purchase any other kind of meals in the popular sense of the word, then it is a restaurant, and therefore fried fish and chips could be purchased on Sunday at such a restaurant.

In the case of the shop above referred to, which sells fried fish and chips for consumption on the premises on Sundays, the owner of the shop also serves tea and bread and butter. The position is, however, confused by the fact that under the Food (Licensing of Establishments) Order, 1948, he holds a licence from the Ministry of Food which describes the premises as a fish and chip restaurant, to allow for the service of fish and chip meals on the premises. I enclose herewith for your perusal a copy of the catering licence. I shall be glad of your views, therefore, on the following points:

(*a*) Is an offence committed where fish and chips are sold at a fried fish and chip shop for consumption on the premises only on Sunday?

(*b*) Does a licence under the Food (Licensing of Establishments) Order, 1948, in any way affect the issue of whether a shop is a fried fish and chip shop or otherwise within the meaning of sch. 5 to the Act?

(*c*) Generally on the above.

A CHIPS.

Answer.

If the relevant paragraph of the schedule had stopped at the word "chips," fish and chips (though incontestably a meal or refreshments) would have been excluded, whether consumed on or off the premises, and whatever the premises. By adding the words "at a fried fish and chip shop" Parliament must have meant something, and can (we think) only have meant that fried fish and chips might be sold in some other sort of premises. We agree with your general interpretation; in particular, that the facts of each case must be looked at, and that a fish and chip shop does not become something different by incidentally selling other things—certainly not by selling tea or coffee, bread and butter, and the like, which (normally if not invariably) would be a accompaniment of the fish and chips.

Upon your specific questions:

(*a*) Yes.

(*b*) No; the description of the place as a "restaurant," for the administrative purposes of the Ministry of Food, does not change its nature.

(*c*) We have nothing to add, except that it is the essential character of the place (as being or not being a "fried fish and chip shop") which has to be determined. This is much more fact than law: *Binns* v. *Wardale*, *supra*, and *L.C.C.* v. *Lees* [1939] 1 All E.R. 191; 103 J.P.89, show how reluctant the Divisional Court had been, in dealing with this schedule, to disturb a decision upon facts.

20.—Small Dwellings Acquisition Acts, 1899-1923—*Advance to (a) aliens and (b) subjects of the Republic of Ireland.*

Inquiries are being made by aliens for advances under the above Acts to enable them to acquire the ownership of their properties.

Will you kindly advise me whether an alien can obtain the advantages of advances made under the above Acts. If not, would you let me know the position in the event of an application being received from a subject of the Republic of Ireland?

ANO.

Answer.

Neither class is under any general disability for holding land. Each, if lawfully residing here, must live somewhere; helping him to buy a house will set free accommodation for somebody else and, if he is credit-worthy, we see no legal objection.

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